

Forrest Booth (SBN 74166)
 Steven L. Rodriguez (SBN 199313)
 COZEN O'CONNOR
 425 California Street, Suite 2400
 San Francisco, California 94104
 Telephone: 415.617.6100
 Facsimile: 415.617.6101

Attorneys for Defendants
 LLOYD'S SYNDICATE NUMBER 1861 and
 LLOYD'S SYNDICATE NUMBER 2020¹

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

TIG INSURANCE COMPANY, a California
 company,

Plaintiff,

v.

LLOYD'S SYNDICATE NUMBER 1861 and
 LLOYD'S SYNDICATE NUMBER 2020,

Defendants.

Case No.: C 06 0047 MJJ

**DEFENDANTS' NOTICE OF MOTION
 AND MOTION TO DISMISS FOR
 IMPROPER VENUE (12(B)(3)); OR IN
 THE ALTERNATIVE TO TRANSFER
 FOR IMPROPER VENUE (28 U.S.C.
 § 1406 (A)) OR IN THE
 ALTERNATIVE TO TRANSFER FOR
 CONVENIENCE (28 U.S.C. § 1404(A))**

Complaint Filed: November 21, 2005

(ORAL ARGUMENT REQUESTED)

[Fed. R. Civ. P. 12(B)(3), Alternatively, 28
 U.S.C. § 1406(A) and 28 U.S.C. § 1404(A)]

Date: Tues., Feb. 28, 2006

Time: 9:30 a.m.

Courtroom: 11, 19th Floor

Judge: Hon. Martin J. Jenkins

[Accompanying Documents:

Memorandum of Points and Authorities;

Declaration of Vincent P. Nesci;

Declaration of Roland Birch; Declaration of
 Forrest Booth; Proposed Order]

///

¹ Syndicate 2020 is not a proper party hereto; Syndicate 1861 is the lead syndicate on Plaintiff's reinsurance program, and hence under Lloyd's rules, is the only proper party herein.

1 TO PLAINTIFF AND ITS ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE that on February 28, 2006, at 9:30 a.m., or as soon thereafter as
 3 counsel may be heard, in Courtroom 11 of the above-entitled Court, located at 450 Golden Gate
 4 Avenue in San Francisco, California, Defendants LLOYD'S SYNDICATE NUMBER 1861 and
 5 LLOYD'S SYNDICATE NUMBER 2020² (hereinafter collectively referred to as "Defendants") will
 6 and do hereby move this Court for a dismissal in Defendants' favor, without leave to amend,
 7 pursuant to Federal Rule of Civil Procedure 12(b)(3), on the ground that venue in California is
 8 improper. Alternatively, Defendants move to transfer this lawsuit to New York, where it can be
 9 consolidated with the declaratory relief action currently pending in the Southern District of New
 10 York (filed on January 6, 2006 and bearing case No. 06 CV 0111) (hereinafter the "New York
 11 Action")³ pursuant to 28 U.S.C. § 1406(a), or alternatively, to transfer to said district for the
 12 convenience of the parties and witnesses under 28 U.S.C. § 1404(a). This motion will be made on
 13 the following grounds:

14 1. California is an improper forum; no fact or occurrence giving rise to this lawsuit filed
 15 by plaintiff TIG Insurance Company (hereinafter "Plaintiff") occurred in this state. This case should
 16 be dismissed on that basis.

17 2. The facts and claims giving rise to this lawsuit occurred in the State of New York.
 18 Plaintiff's principal place of business is in the State of Texas, Plaintiff's underwriters and employees
 19 are located in the States of Texas and Pennsylvania, Plaintiff's documents are located in the States of
 20 Texas and Pennsylvania, and the percipient witnesses to the underlying personal injury matters are
 21 all located in the State of New York.

22 3. The circumstances of this case and judicial economy require that this action be
 23 dismissed from this Court.

24 4. Alternatively, this case should be transferred to the Southern District of New York,
 25 pursuant to 28 U.S.C. § 1406(a), where it can be consolidated with the action currently pending in
 26

27 ² See fn. 1, *supra*.

28 ³ The parties to the New York Action are Tonicstar Limited As Sole Capital Provider For Syndicate
 1861 At Lloyd's of London, as plaintiff, and TIG Insurance Company, as defendant.

1 the Southern District of New York (bearing case No. 06CV0111, filed on January 6, 2006), or
2 alternatively, it should be transferred to said district for the convenience of the witnesses, pursuant to
3 28 U.S.C. § 1404(a).

4 This Motion to Dismiss will be based upon this Notice of Motion and Motion, the
5 Memorandum of Points and Authorities, the Declaration of Vincent P. Nesci, the Declaration of
6 Roland Birch, the Declaration of Forrest Booth and exhibits thereto, the Proposed Order filed
7 herewith, the papers, records, and pleadings on file in this action, and the argument of counsel at the
8 hearing of this Motion.

9 DATED: January 11, 2006

COZEN O'CONNOR

10
11 By: 

FORREST BOOTH
STEVEN L. RODRIGUEZ
Attorneys for Defendants
LLOYD'S SYNDICATE NUMBER 1861 AND
LLOYD'S SYNDICATE NUMBER 2020⁴

12
13
14
15 SANFRANI\35176\1 099994.000
16
17
18
19
20
21
22
23
24
25
26
27

28 ⁴ See fn. 1, *supra*.

PROOF / CERTIFICATE OF SERVICE

I, the undersigned, declare: I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the City and County of San Francisco, California, in which county the within mentioned service occurred. My business address is Cozen O'Connor, 425 California Street, Suite 2400, San Francisco, California 94104-2215; Telephone: (415) 617-6100; Facsimile: (415) 617-6101.

On the date set forth below, I placed the foregoing

DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS FOR IMPROPER VENUE (12(B)(3)); OR IN THE ALTERNATIVE TO TRANSFER FOR IMPROPER VENUE (28 U.S.C. § 1406 (A)) OR IN THE ALTERNATIVE TO TRANSFER FOR CONVENIENCE (28 U.S.C. § 1404(A))

in envelope(s) addressed as follows:

(By Facsimile) I caused each such document listed above to be transmitted via telecopier on this date before 6:00 p.m. to the facsimile numbers of each addressee as indicated below or on the attached Service List.

X (By First Class Mail) I sealed each envelope and caused each, with first-class postage thereon fully prepaid, to be placed for deposit in the United States mail at San Francisco, California addressed to the offices of each addressee as indicated below or on the attached Service List.

William Sneed
Melanie Jo Triebel
SIDLEY AUSTIN BROWN & WOOD LLP
Bank One Plaza
10 South Dearborn Street
Chicago, IL 60603
Tel: 312-853-7000; Fax: 312-853-7036
Attorneys for Plaintiff TIG INS. CO.

(By Personal Service) I sealed each envelope and caused each, with courier charges prepaid, if applicable, to be personally delivered by messenger and/or in-house messenger to the offices of each addressee as indicated below or on the attached Service List.

(By U.S. Postal Express Mail) I sealed each envelope and caused each, with Express Mail postage thereon fully prepaid, to be placed in the U.S. Post Office Express Mail depository at San Francisco, California for next day delivery addressed to the offices of each addressee as indicated below or on the attached Service List.

(By Federal Express/UPS) I sealed each envelope and caused each, with shipping charges fully prepaid, to be delivered to a Federal Express/UPS pick up box or courier at San Francisco, California for next business day delivery addressed to the offices of each addressee as indicated below or on the attached Service List.

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

1 I declare that I am employed in the office of a member of the Bar of this Court at whose
2 direction the service was made. I declare under penalty of perjury under the laws of the United
States of America and of the State of California that the foregoing is true and correct.

3 Executed January 11, 2006 at San Francisco, California.

4 By: 

5 D. Helen Davis

6 SANFRAN1\35180\1 099994.000